

## **ATTACHMENT 2**

## **SBC CALIFORNIA - ENHANCED CARE AGREEMENT**

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ between Pacific Bell Telephone Company d/b/a SBC California (hereinafter referred to as "SBC California") and \_\_\_\_\_ (hereinafter referred to as Access Carrier) for the ACNA and CIC(s):

<list below each combination of ACNA/CIC>  
(ACNA - CIC)

In consideration of the representations and mutual covenants contained in this Agreement, the parties hereby agree as follows:

### **Scope of Product**

SBC California will provide Access Carrier (AC) the "Enhanced Customer Account Record Exchange (CARE) Product". The Enhanced CARE Product shall consist of the provision of certain types of Customer Information (hereinafter defined) concerning Primary Inter-exchange Carrier (PIC) customers of AC (as hereinafter defined) for interstate services. The Enhanced CARE Product will include any changes in the AC's interstate customer base as reflected within SBC California's Carrier Enhanced System for Access Request/Easy Access Request System (CESAR/EARS). The Equal Access Subscription CARE/ISI (SR-STS-000321) supported by the Ordering and Billing Forum (OBF) provides the basic structure for information to be exchanged between SBC California and the AC.

Generically speaking, Customer Information is information contained in SBC California's CESAR/EARS database concerning SBC California end user customers that have selected AC as their PIC for interstate InterLATA service, hereinafter "PIC Customer" (all SBC California retail Working Telephone Numbers (WTNs) PIC'd to the AC in the CESAR/EARS database). Enhanced CARE Product will include changes, additions and/or deletions in the PIC Customer base as reflected within CESAR/EARS. The exchange of information will be facilitated using specific identifiers called Transaction Codes ("TCs") and Status Indicators ("SIs") as set forth in the CARE/ISI as supported by the OBF. SBC California can change the parameters (TCSIs) of the Enhanced CARE Product without prior notice but will advise the industry through Accessible Letter notification. For example, during the term of this agreement the specific TCSIs provided may change at the discretion of SBC California. When the TCSIs being provided are added or deleted, AC will be notified via an Accessible Letter, although no prior notice is required. The CARE products described, and available, in this agreement include:

- Enhanced CARE (1 or 3 year Term)
  - Snapshots
  - Data Gathering
  - Verification Services
  - CLEC Activities
1. "Enhanced CARE" provides detailed level Transaction Code/Status Indicators (TCSIs) to convey changes, additions, and/or deletions in the PIC Customer database as reflected within CESAR/EARS.
  2. "Snapshot" provides a list of all Working Telephone Numbers/Terminals (WTN/TER) PIC'd (InterLATA) to the requesting AC. The Snapshot does not include resold or Unbundled Network Element - Platform (UNE-P) lines.
  3. "Data Gathering" provides the AC all WTNs/TERs associated with a Billed Telephone Number (BTN). Data Gathering does not provide information on resold or UNE-P lines; however, a reject TCSI will be provided identifying the Local Service Provider (LSP) ID when available.

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4. "Verification Services" provides information in response to PIC Verification requests (0707) from the CESAR/EARS CARE database. Responses and certain reject TCSIs will be charged. Information on resold or UNE-P lines will not be provided; however, a reject TCSI will be provided identifying the LSP ID when available.
5. "Competitive Local Exchange Carrier (CLEC) Activities" on resold or UNE-P lines will be provided only to subscribers of CLEC Activities. The CARE TCSIs provided will be for the following activities:
  - a. End User migrations to and from Resale (40XX & 42XX)
  - b. PIC changes initiated by the CLEC (40XX & 42XX) and
  - c. Number Changes (43XX)
  - d. NPA Splits (43XX)

The provision of Customer Information by SBC California to AC is subject to any and all tariffs, court orders, applicable laws, and regulations. In the event of a conflict between the Terms of this Agreement and any tariff, court order, applicable law or regulation, the tariff, court order, applicable law or regulation shall govern.

In the event data is lost or unintelligible, AC will notify SBC California in writing, within ten (10) calendar days of the date AC received or should have received the Customer Information in accordance with the frequency and other specifications agreed upon by the parties. Upon receipt of timely notification from AC, SBC California will re-supply information to the AC within ten (10) calendar days from the receipt of AC's written notification. Failure to timely notify SBC California of the need for corrected or re-supplied information will result in the information being unavailable and SBC California will be excused from further responsibility to supply the requested Customer Information. If SBC California is not at fault, SBC California reserves the right to charge \$150 per file for recovery requests to re-supply Enhanced CARE information.

### **Restrictions On Use**

Customer Information provided by SBC California pursuant to this Agreement shall only be used by AC for the limited purposes described herein, i.e., to build and verify AC's databases in connection with PIC'd accounts, for the purpose of providing billing of AC services to AC end users, for billing and collection of long distance services, and for AC to communicate to AC end users in connection with the aforesaid uses. The Customer Information provided to AC pursuant to this Agreement may not be further resold by AC. AC shall make every effort to make sure that Customer Information is provided only to authorized personnel of AC or agents of AC performing permitted uses defined above.

### **Restrictions on Disclosure of Nonpublished and Nonlisted Numbers**

AC ACKNOWLEDGES THE SENSITIVITY AND IMPORTANCE OF PROTECTING NONPUBLISHED AND UNLISTED NUMBERS AGAINST UNAUTHORIZED DISCLOSURE. AC agrees that Subscriber Information which SBC California designates as nonpublished and/or nonlisted shall be used solely for AC's internal purposes. AC shall maintain the confidentiality of such nonpublished and/or nonlisted information, exercising due care and taking reasonable precautions to prevent disclosure of such information to anyone except employees of AC or its Clients with the need to have access to such information in connection with updating AC records, providing telecommunications services to Subscribers, and for billing and collection purposes related to Subscribers who are Presubscribed to AC.

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### **Applicability of Statutes, Decisions and Rules**

Notwithstanding any other provision in this Agreement, a Party's ability to disclose information or use disclosed information is subject to all applicable statutes, decisions, and regulatory rules concerning the disclosure and use of such information which, by their express terms, mandate or permit a different handling of such information, including, but not limited to Section 222 of the Telecommunications Act of 1996 and any regulations promulgated pursuant thereto. However, AC expressly waives any Claims against SBC California for use of Confidential Information so long as such use is authorized by the Subscriber, to the extent authorization is required by the Telecommunications Act and any regulations promulgated thereunder. Such waiver by AC is made notwithstanding any state or federal statutory provision or regulation.

### **Charges**

Charges associated with the provisioning of Enhanced CARE are based upon the snapshot of WTNs or WTNs/ Terminals (TERs) PIC'd to the AC at the end of the month. Enhanced CARE is available with pricing in two (2) term options (1 year or 3 years). The monthly rates (per WTN/TER) are as follows:

- 1 year term agreement - \$.05
- 3 year term agreement - \$.045

### **Snapshots:**

Snapshots will be billed at a rate of \$0.03 per PIC'd WTN/TER per snapshot record.

### **Competitive Local Exchange Carrier (CLEC) Activities:**

The rate for CLEC Activities is \$0.05 per TCSI transaction.

### **Data Gathering:**

The rate for Data Gathering is \$0.25 per chargeable transaction.

### **Verification Services:**

The rate for Verification Services is \$0.05 per transaction.

Billing shall be on a monthly basis via SBC California CABs and shall be subject to the payment terms set forth in this Agreement.

The above charges shall be due upon receipt of the bill. SBC California reserves the right to charge interest at the rate of one and one half percent (1.5%) per month or at the highest interest rate payable by law, whichever is lower, for payment received more than thirty (30) days following the due date.

In addition to the Late Payment Charges set forth above, SBC California may recover any expenses it reasonably incurs for the collection of charges for which payment is past due, including attorneys' fees and costs.

### **Warranty**

SBC California does not warrant that the Enhanced CARE Product will reflect all customer activity as of the date it is provided. However, SBC California does warrant that Enhanced CARE Product shall be provided in conformity with this Agreement.

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Except as expressly provided above, SBC California makes no warranty of any kind, either expressed or implied, including, but not limited to, all implied warranties of merchantability and fitness for a particular purpose.

### **Limitation of Liability**

SBC CALIFORNIA'S AGGREGATE LIABILITY TO AC FOR ALL DIRECT DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM A BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER TORT WITH RESPECT TO THE SERVICES, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE CHARGES FOR THE PARTICULAR SERVICES GIVING RISE TO THE LIABILITY DURING THE CONTRACT TERM OR RENEWAL TERM IN WHICH THE LIABILITY AROSE. AC RELEASES SBC CALIFORNIA FROM ANY LIABILITY IN EXCESS OF THIS AMOUNT.

IN NO EVENT SHALL SBC CALIFORNIA BE LIABLE TO AC FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST REVENUES, PROFITS OR SAVINGS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AC WAIVES ANY CLAIM AGAINST SBC CALIFORNIA FOR PUNITIVE OR EXEMPLARY DAMAGES.

WITHOUT IN ANY WAY LIMITING THE APPLICATION OF THE PARAGRAPHS ABOVE, THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IN THIS SECTION IS AC'S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### **Term**

This agreement shall be for a term of \_\_\_\_\_ year(s) from the effective date.

Renewal after the initial term shall be by mutual agreement. AC shall notify SBC California not less than sixty (60) days prior to the end of the term of its intent to either discontinue Services at the end of the term or negotiate a renewal of the Agreement.

If the parties have not negotiated a renewal or new agreement by the end of the term, then SBC California may, at its option, either (a) terminate all Services at the end of the term, (b) continue to provide Services under the same terms and conditions as if this Agreement were extended on a month-to-month basis, subject to termination on one month's notice, or (c) provide a written temporary extension of this Agreement pending the completion of negotiations on such renewal, subject to such amended and additional terms as SBC California may deem appropriate.

### **Termination**

AC may terminate this Agreement at any time without cause upon sixty (60) days prior written notice to SBC California, provided that, in such event, AC will pay a termination charge equivalent to the total of AC's monthly billing for Enhanced CARE for the preceding three (3) months.

SBC California may terminate this Agreement at any time without cause upon sixty (60) days prior written notice to AC.

In addition, SBC California shall have the right to terminate this Agreement:

1. Upon ten (10) days prior written notice in the event of a default by AC in any payment obligation, if such default is not cured within such ten (10) day period. (Further, in the event of such default, SBC

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California may cease the provision of Enhanced CARE information without further notice. In such case, carriers would only receive Default CARE Service. SBC California will not resume the provision of Enhanced CARE information until all past due debts are paid or other accommodations satisfactory to SBC California are made. SBC California will not be required to re-send Enhanced CARE information that was not sent during the period of suspension); or

2. Upon thirty (30) days prior written notice to AC in the event of any default under or breach of any material term or condition of this Agreement by AC, if such default or breach is not cured by AC within such thirty (30)-day period, or
3. Immediately upon written notice to AC, if AC becomes or is declared insolvent or bankrupt, is the subject of any proceedings related to its liquidation, insolvency or for the appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors, admits its inability to pay its debts as they come due, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, but only if and to the extent such termination is not prohibited by law.

Upon notice of termination, SBC California will continue to provide Enhanced CARE Product until the actual termination date. AC shall pay for such product in addition to any applicable termination charge.

### **Miscellaneous**

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of California.

**Force Majeure.** The obligations of SBC California are subject to force majeure and SBC California shall not be in default under this Agreement if any failure or delay in performance is caused by strike or other labor problems; accident; acts of God; fire; flood; adverse weather conditions; material or facility shortages or unavailability not due to any fault of SBC California not resulting from its failure to timely place orders therefore; lack of transportation; condemnation or exercise of rights of eminent domain; or civil disorder; or any other cause beyond the reasonable control of SBC California.

**Assignment.** Any assignment, in whole or in part, by either party of any right or obligation or of any interest hereunder without the written consent of the other part shall be void. All obligations and duties of any party under this Agreement shall be binding on all successors in interest of such party for the duration of this Agreement.

**Entire Agreement.** This Agreement, including SBC California's CARE record format specifications guidelines referred to in this Agreement and as modified from time to time, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings, or agreements relating to this Agreement which are not fully expressed herein. The parties agree that any other terms or conditions shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties.

**Survivability.** Notwithstanding expiration or termination of this Agreement, the provisions of the Agreement which by their nature or context are required or intended to survive shall survive and remain in full force and effect.

**Notice and Demands.** Except as otherwise provided under this Agreement, all notices, demands, or requests which may be given by any party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered in person or via express service or on the date deposited, postage prepaid, in the United States mail via Certified Mail, return receipt requested, to the respective parties and addressed as follows:

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To: (AC)

To: SBC California

If personal delivery is selected as the method of giving notice under this Section, a receipt of such delivery shall be obtained. The address to which such notices, demands, requests, elections or other communications is to be given by either party may be changed by written notice given by such party to the other party pursuant to this Agreement.

### Compliance with Law.

Both parties agree that they will comply with the provisions of all applicable federal, state and local laws, ordinances, regulations and codes with which they are obligated to comply in their performance hereunder and in connection with the Customer Information provided hereunder.

### Taxes Imposed on Services Performed by SBC California

AC shall be responsible for payment of all sales, use or other taxes of a similar nature imposed on SBC California's performance of services under this Agreement, excluding any income tax payable by SBC California on its revenues from such services. SBC California agrees to use reasonable efforts to invoice AC for such taxes at the time SBC California invoices AC for the underlying services performed; provided, however, that this obligation shall not be deemed to prohibit SBC California from invoicing for such taxes at a later date to correct errors or omissions from the earlier invoice. If any federal, state or local jurisdiction notifies SBC California that any additional sales, use or other taxes (including interest, penalties and surcharges thereon) are due as a result of SBC California's performance under this Agreement, AC shall promptly reimburse SBC California for such tax, interest, penalty and surcharge upon notice thereof.

### Suspension of Performance; Offset

Upon notice to AC, and separate from the rights of termination under Section "Termination," SBC California may suspend performance of this Agreement immediately if AC is in breach of this or any other agreement between the parties. Notwithstanding anything to the contrary in this Agreement, if AC's financial condition becomes impaired or if AC fails to pay its obligations to SBC California as they become due, AC agrees that SBC California may offset any amounts owed by AC to SBC California against any amounts SBC California may owe AC under this Agreement, under any other agreement between the parties, or for services provided under any applicable tariff.

### Publicity

AC shall not identify, either expressly or by implication, SBC California or its corporate affiliates or use any of their names, trademarks, trade names, service marks or other proprietary marks in any advertising, press releases, publicity matters or other promotional materials without SBC California's prior written consent.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized agents as of the date written above below. Signature by AC following the product title implies agreement to the terms set forth in this Agreement for that product.



## SBC CALIFORNIA - ENHANCED CARE AGREEMENT

[Redacted]

[Redacted]

[Redacted]

AC – CIC/ACNA

By:

Printed Name:

Title:

Date:

Product:

**CLEC Activities**

AC – CIC/ACNA

By:

Printed Name:

Title:

Date:

Product:

**Snapshots**

AC – CIC/ACNA

By:

Printed Name:

Title:

Date:

## SBC CALIFORNIA - ENHANCED CARE AGREEMENT

Product: **Data Gathering**

AC – CIC/ACNA

By:

Printed Name:

Title:

Date:

Product:

**Verification Services**

AC – CIC/ACNA

By:

Printed Name:

Title:

Date:

Company:

**SBC CALIFORNIA**

By:

Printed Name:

Title:

Date:

**Document Retention:** The original copy of this document must be maintained by the SBC Account Manager for the term of this agreement.